FILE COPY

IN THE

Supreme Court of the United States

October Term, 1946
No. 489

JOSEPH A. GORDON,

Petitioner,

vs.

PAUL A. PORTER, Price Administrator,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit and Brief in Support Thereof.

LOUIS H. BURKE,
458 South Spring Street, Los Angeles 13, California,
Counsel for Petitioner.

DANIEL G. MARSHALL,
Of Counsel.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

SUBJECT INDEX.

TABLE OF AUTHORITIES CITED.

CASES.

STATUTES.

IN THE

Supreme Court of the United States

October Term, 1945

No.....

JOSEPH A. GORDON,

Petitioner,

vs.

PAUL A. PORTER, Price Administrator,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit and Brief in Support Thereof.

Your petitioner respectfully shows:

Summary and Statement of Matter Involved.

Pursuant to the Emergency Price Control Act of 1942 (56 Stat. c. 26 (June 30, 1944); 58 Stat. 632, 640, c. 325; 50 U. S. C. A. Appx., §901, 11 F. C. A., Title 50, Appx. 25; 50 U. S. C. A. Appx., §925; Public Law No 108, 79th Cong., 1st Sess. (50 Stat. ....., Chap. 214)), hereinafter called the Act, the Price Administrator issued to petitioner a license as a condition of selling various food commodities for which maximum prices were established under the Act. [R. 48.] This license was suspended for a period of fourteen days from September 16, 1945 to September 29, 1945

by the judgment of the trial court [R. 53], the suspension being stayed, however, during the appeal [R. 209], for violation of a regulation issued by the Administrator in an action under Section 205(f)(2) of the Act. [R. 47, 48.]

On June 25, 1946 the United States Circuit Court of Appeals for the Ninth Circuit affirmed this judgment. [R. 208, *et seq.; Gordon v. Porter,* 155 F. (2d) 949.] This opinion said that the evidence warranted the finding that petitioner "failed to post or mark the sales prices on many commodities under a license granted him in the manner required of him by the Price Administrator's Revised General Order 51, L. A. Order No. 5." It further observed that other violations of the regulations were found, but that it was unnecessary to consider them.

The other violations which the Circuit Court said it was unnecessary to consider were the subject of a complaint by petitioner under Section 204(a) of the Act, which attacked the validity of certain provisions of the Administrator's regulations classifying petitioner's business and fixing his price ceilings, on the basis of the volume of his sales and the sales of other retailers under the same roof, strangers to him. This complaint was dismissed by the United States Emergency Court of Appeals (*Gordon v. Porter,* 153 F. (2d) 614), a petition for rehearing being there denied and with certiorari also being denied on June 3, 1946 by this Honorable Court (No. 1147. *Joseph A. Gordon v. Paul A. Porter, Price Administrator,* 90 Law. Ed. Adv. Ops. 1072).

The Circuit Court denied the petition for a rehearing of this petitioner (filed July 24, 1946 [R. 213]) by order and opinion dated August 6. 1946. [R. 213, 214.]

The Act expired by its terms on June 30, 1946 (50 U. S. C. A. 1945 Cumulative Annual Pocket Part, p. 49), but contained a saving clause, later herein quoted, which petitioner claims is not applicable to the case at bar.

Jurisdiction.

Jurisdiction of this Honorable Court is invoked under the provisions of Section 240, Judicial Code, 28 U. S. C. A., Section 347, the judgment sought to be reviewed being of a United States Circuit Court of Appeals.

Questions Presented.

1. Where a license issued to a food retailer under the Act is suspended by the trial court, whose judgment [R. 53] is affirmed by the Circuit Court prior to June 30, 1946 [R. 209], the date on which the provisions of the Act, and all regulations, orders, price schedules and requirements thereunder terminated (50 U. S. C. A., 1945 Cumulative Annual Pocket Part, p. 49), did the Circuit Court err in refusing on August 6, 1946 to dismiss the proceeding [R. 213, 214] as asked by petitioner in his petition for rehearing filed July 24, 1946 [R. 213] on the ground that the question of the suspension of his license had become moot, at which time the Price Control Extension Act of 1946, hereinafter referred to as the "Extension Act", had not been signed by the President, which he did on July 25, 1946 (15 United States Law Weekly, 32)?

2. Where the statute under which this action was filed (the Act (Section 205(f)(2)) provided that

> "Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this sub-section, or has violated any of

> the provisions of any regulation, order, or requirement under section 2 or section 202(b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is applicable to such person, a warning notice shall be sent by registered mail to such person. If the Administrator has reason to believe that such person has again violated any of the provisions of such license, regulation, order, price schedule, or requirement after receipt of such warning notice, the Administrator may petition any State or Territorial court of competent jurisdiction or a district court subject to the limitations hereinafter provided, for an order suspending the license of such person for any period of not more than twelve months. * * *"

did the Circuit Court err in holding [R. 211] that it was not a condition precedent to a judgment of suspension that the Administrator prove at the trial a violation asserted in the notice, since the Administrator is a public officer and is presumed to have done his duty in arriving at his "judgment"?

Reasons Relied on for the Allowance of the Writ.

The questions here presented for review are important questions of federal law which have not been, but should be, settled by this Honorable Court and, furthermore, the Circuit Court, petitioner respectfully states, has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a departure by the District Court as to call for an exercise of the power of supervision of this Court.

This is so for the following reasons: With respect to the first question, the Extension Act, enacted July 25,

1946 (15 United States Law Weekly, 32), provides in Section 18 that

> "(1) The provisions of this Act shall take effect as of June 30, 1946 and (2) all regulations, orders, price schedules and requirements under the Emergency Price Control Act of 1942, as amended . . ., and the Stabilization Act of 1942, as amended, which were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent as if this Act had been enacted on June 30, 1946, and (3) any proceeding, petition, application, or protest which was pending under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, on June 30, 1946, shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act had been enacted on June 30, 1946 . . . provided, further, that no act or transaction, or omission, or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act, shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such acts: . . .".

The interim of twenty-four days from the termination of the Act on June 30, 1946 to July 25, 1946, the date of enactment of the Extension Act, poses serious questions concerning the effect of the purported saving clause contained in Section 18 of the latter statute, above quoted, in its attempt to bridge this interim and to make this price control legislation continuously effective. As is seen from this saving language, no act occurring in this interim shall be deemed to be a violation of the Act, or of any regulation, order, schedule or requirement thereunder.

The license to deal in price control commodities issued to petitioner, and suspended in this proceeding, was issued to him under the Act. The power to issue licenses, the need for such licenses and the license issued to petitioner terminated with the Act on June 30, 1946. The effect of the Extension Act, it is submitted, is to create new licensing powers in the Administrator, exactly duplicating those be held under the Act but, nevertheless, the licenses to be issued by him under the Extension Act are actually "new" licenses. This petitioner does not now need the license issued under the Act to deal in price controlled commodities but he will need, if the Administrator invokes his licensing powers, a "new" license under the Extension Act. These are separate licenses. Is there any point in suspending a license which has terminated and for which petitioner has no further need? When the trial court judgment was written in 1945 the Act was in effect and petitioner needed such a license to deal in price controlled commodities. There was point in having the judgment then say that his license was suspended and the language then had meaning. If the judgment is now finally affirmed the notice of suspension to be posted thereunder, in order to conform to the new statutory situation, should be in this meaningless language:

> "The license granted to Joseph A. Gordon by the Price Administrator under the Emergency Price Control Act of 1942, as amended, as a condition of selling commodities subject to price control, and which terminated June 30, 1946, and for which he has no further need, is suspended for a period of two weeks
>
> Joseph A. Gordon has been issued a license to deal in price controlled commodities under the Price Control Extension Act of 1946 and is entitled thereunder to deal in price controlled commodities."

There is nothing in the Extension Act which gives the Administrator the power to refuse a license thereunder to petitioner, if the Administrator avails himself of the licensing power there made available to him, upon the ground that petitioner's license under the Act was not in good standing on June 30, 1946, when the Act, and all licenses issued thereunder, terminated.

The litigation is, consequently, moot, petitioner contends, and this Honorable Court ought to grant certiorari and so hold.

Provision for enforcement of the Extension Act by suits to suspend licenses is also contained in the Extension Act, which by Section 13 thereof amends the third sentence of paragraph (2) of Section 205(f) of the Act by adding the provision that "if the defendant proves that the violation in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation, then in that event no suspension shall be ordered or directed."

On June 30, 1946, there undoubtedly were other actions to suspend licenses pending throughout the country. Petitioner therefore respectfully suggests that this action is an important one of federal law and requires appropriate settlement by this Honorable Court.

With respect to the second question, petitioner suggests that it is of general importance to the Administrator, and to those subject to his regulations, to be advised by the court of last resort whether or not the Administrator may issue a warning notice to a retailer who may never have violated the Act and then rely upon the "presumption" that he has done his duty, when in fact he has not, a course of action open to him and approved by the Circuit Court in

its decision herein, and thus be relieved of the necessity of proving at the trial of the suspension action that a violation described in the warning notice actually occurred. In short, it is of general importance for the Administrator, and food retailers, to know finally whether or not he may issue warning notices to all food retailers in the country instanter, and at the trial of a suit by him to suspend a license, avoid the necessity of proving a violation asserted in the warning notice by relying on the "presumption" accorded him by the Circuit Court here.

Conclusion.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted to review the judgment of the United States Circuit Court of Appeals in the case at bar, *Gordon v. Porter,* 155 F. (2d)

September, 1946.

JOSEPH A. GORDON,
Petitioner,

By LOUIS H. BURKE,
Counsel for Petitioner.

DANIEL G. MARSHALL,
Of Counsel.

The undersigned hereby certifies that the foregoing petition is, in his opinion, well founded and that it is not interposed for delay.

LOUIS H. BURKE,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

October Term, 1945

No.....

JOSEPH A. GORDON,

Petitioner,

vs.

PAUL A. PORTER, Price Administrator,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

Opinions Below.

The judgment of the trial court was entered September 4, 1945. [R. 54.]

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit in the case at bar, rendered and filed June 25, 1946 [R. 209 *et seq.*], is reported in 155 F. (2d) 949, upon which date its judgment affirming the lower court was also entered. [R. 208.]

The opinion of that Court filed August 6, 1946, accompanying its order, filed the same day, denying the petition for rehearing, which was filed July 24, 1946 [R. 213], is not reported but is printed in the record here, pages 213, 214.

Jurisdiction.

The grounds upon which the jurisdiction of this Court is invoked are stated in the petition at page three.

Statement of Facts.

In this suit by the Administrator, the trial court gave judgment in his favor under Section 205(f)(2) of the Act suspending the license issued by the Administrator under Section 205(f)(1) from September 16, 1945 to September 29, 1945 [R. 54], the suspension being stayed pending appeal. [R. 71.]

The Circuit Court held that the evidence "warranted the finding that petitioner failed to post or mark prices on many commodities sold at retail under a license granted him", saying also that other violations of the regulations were found "but it is unnecessary to consider them . . .", in its opinion filed June 25, 1946. [R. 209.]

It was also decided [R. 210, 211] that it was not necessary for the Administrator to prove at the trial any of the violations asserted in the warning notice which he delivered to petitioner under the statute giving him the authority to file this action and which reads as follows:

> "Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this sub-section, or has violated any of the provisions of any regulation, order, or requirement under section 2 or section 202(b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is ap-

plicable to such person, a warning notice shall be sent by registered mail to such person. If the Administrator has reason to believe that such person has again violated any of the provisions of such license, regulation, order, price schedule, or requirement after receipt of such warning notice, the Administrator may petition any State or Territorial court of competent jurisdiction or a district court subject to the limitations hereinafter provided, for an order suspending the license of such person for any period of not more than twelve months. * * *."

The Act, Section 205(f)(2).

The Circuit Court so concluded on the ground that the Administrator "is a public officer and presumed to have done his duty in arriving at his 'judgment' that a person has violated any of the provisions of his license, or of any regulation." After this opinion and judgment affirming the trial court were filed on June 25, 1946 [R. 212], and on June 30, 1946, the provisions of the Act, and all regulations, orders, price schedules, and requirements thereunder, terminated by reason of the following language contained in the Act:

"The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1946, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense

> and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act [said sections] and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense (as amended June 30, 1945, C. 214, §1, 59 Stat. 306)."
>
> 50 U. S. C. A., 1945 Cumulative Annual Pocket Part, p. 49.

On July 24, 1946, being within the thirty-day period after judgment prescribed by Rule 25 of the Circuit Court so to do, petitioner filed a petition for rehearing in that court [R. 213] contending, as the opinion denying the same points out, "that on the expiration of the period of the Emergency Price Control Act of 1942 on June 30, 1946, the question of his suspension of his sales license and of the injunction from selling above maximum prices has become moot, and that the proceeding should be dismissed." [R. 214.]

On the following day the President signed the Price Extension Act of 1946 (15 United States Law Weekly 32), which provides in Section 18 as follows:

> "(1) The provisions of this Act shall take effect as of June 30, 1946, and (2) all regulations, orders, price schedules and requirements under the Emergency Price Control Act of 1942, as amended . . ., and the Stabilization Act of 1942, as amended, which

were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent as if this Act had been enacted on June 30, 1946, and (3) any proceeding, petition, application, or protest which was pending under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, on June 30, 1946, shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act had been enacted on June 30, 1946 . . . provided, further, that no act or transaction, or omission, or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act, shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such acts: . . ."

Specification of Errors.

The Circuit Court erred:

1. In refusing to dismiss the proceeding, as urged by petitioner in his petition for rehearing, the same having become moot by reason of the termination of the Act; and

2. In holding that the Administrator was not required to prove at the trial any of the violations asserted by him in the warning notice served on petitioner.

ARGUMENT.

I.

The Circuit Court Erred in Refusing to Dismiss the Proceeding, as Urged by Petitioner in His Petition for Rehearing, the Same Having Become Moot by Reason of the Termination of the Act.

The termination of the Act terminated the license here suspended by the trial court and likewise terminated the need by petitioner for such license to deal in price controlled commodities.

The saving clause in the Act, above quoted, preserves after termination of the Act on June 30, 1946, only suits upon offenses occurring prior to the termination date where monetary penalties or criminal penalties are sought, in the very nature of the situation. This saving clause obviously could not preserve for enforcement after the termination date a suit to suspend a license, as in the case at bar, when that license expired with the termination of the Act.

Whatever may be the effect of the language in the Extension Act purporting to make the same effective as of June 30, 1946, and thus make price control continuously effective even through the interim of twenty-four days between the termination of the Act and the enactment of the Extension Act, with respect to damage actions and criminal actions, it is meaningless so far as a suit to suspend a license is concerned, the license suspended prior

to June 30, 1946, having expired on that date and not being thereafter required.

If the Administrator decides to avail himself of the licensing power given him in the Extension Act, which duplicates the same power given him in the Act, he has no authority under the Extension Act to refuse the issuance of a "new" license to a retailer on the ground that on June 30, 1946, when the Act expired, a license held thereunder was not in good standing in the sense that a suspension having been judicially ordered, by a judgment not then final, had not yet been served.

This litigation is therefore moot and this Honorable Court ought to grant certiorari and so declare upon the authority of such cases as the following:

Alejandrino v. Quezon, 271 U. S. 528, 70 L. Ed. 1071, 46 S. Ct. 600;

Brownlow v. Schwartz, 261 U. S. 216, 67 L. Ed. 620, 43 S. Ct. 263;

Atherton Mills v. Johnson, 259 U. S. 13, 66 L. Ed. 814, 42 S. Ct. 422;

Heitmuller v. Stokes, 256 U. S. 359, 65 L. Ed. 990, 41 S. Ct. 522;

Berry v. Davis, 242 U. S. 468, 61 L. Ed. 441, 37 S. Ct. 208.

II.

The Circuit Court Erred in Holding That the Administrator Was Not Required to Prove at the Trial Any Violation Asserted by Him in the Warning Notice Served on Petitioner.

The statute authorizing this action by the Administrator fixed as a condition precedent to such suit the requirement that he must give a warning notice whenever in his judgment a person has violated any of the provisions of the license issued to such person or has violated any of the provisions of any regulation (the Act, Section 205 (f) (2)). He may then file such an action if after the receipt of such warning notice the person to whom it is given again commits a violation.

At the trial the petitioner objected to the warning notice being received in evidence. [R. 83, 105-107.] The trial court filed a written decision holding that it was not necessary for the Administrator to make any proof of any violation asserted in the warning notice. [R. 41-44.]

Petitioner persisted in the same objection in the Circuit Court, as shown by its opinion. [R. 211.] The effect of the Circuit Court ruling is to say that the condition precedent is satisfied by the Administrator giving the warning notice, even though no violation had occurred up to that time.

There is no doubt that the Administrator exercised his judgment in the sense that he determined to send the notice because the fact is that he did send the notice. However, he proved no violation asserted in the warning notice at the trial. It may be that no violation ever occurred. It may be that the Administrator in handling hundreds of thousands of matters under the Act, by a clerical error,

may have sent this warning notice to this petitioner, intending it for some other person. He claims, however, and the trial court and Circuit Court agreed with him, that at no stage of the judicial proceeding should he be required to make some proof of any violations asserted in the notice. It may be that that which the Administrator conceived to be a violation was not in law a violation because of his misapprehension of the legal rights of petitioner.

Granting that the exercise of his judgment leading to the issuance of the warning notice is a discretionary matter, petitioner contends that it is that kind of a discretionary matter permitting judicial review within the meaning of the language of this Honorable Court in *Arenas v. United States of America*, 322 U. S. 419, 88 L. Ed. 1363, 64 S. Ct. 1090, where it is said:

> "Even in some discretionary matters, it has been held that if an official acts solely on grounds which misapprehend the legal rights of the parties, an otherwise unreviewable discretion may become subject to correction. Perkins v. Elg, 307 U. S. 325, 349, 83 L. ed. 1320, 59 S. Ct. 884."

The judgment of the Administrator which led him to issue this warning notice is closely akin, if not the same, as an order issued by him. This being so, the Circuit Court decision in the case at bar is in conflict with the decision of another Circuit Court of Appeals which has said that

> "Where courts have been called upon to review administrative orders in the past, they have customarily required that the order sufficiently disclose the basis of the action to satisfy them that there has been a

compliance with the express and implied conditions underlying the exercise of the power."

Walling v. Benson, 137 F. (2d) 501 (C. C. A. 8).

The importance of this warning notice is at once apparent. It is not only a condition precedent to the maintenance of such an action as the one at bar, but it has another important aspect. So far as enforcement by an action of the type here considered is concerned, the warning notice has the indubitable effect of cancelling all violation prior to its service upon a retailer. In other words, a retailer may operate in open and flagrant violation of the regulations but, so far as an action of the type here considered is concerned, these violations are cancelled upon the warning notice being served.

Unless the warning notice is served, the action cannot be maintained.

The legislative intent behind the enactment of this provision is evident. It is well known that the Act necessarily imposed heavy burdens of administrative detail on retailers. Dealing in thousands of items, it was inevitable that the best disposed retailer could not hope to be letter perfect in his compliance with the myriad of regulations necessarily flowing from the Act.

However, the Congress obviously took into consideration the plight of well-intentioned retailers and, so far as this type of enforcement action is concerned, insisted by this legislation that he first have a warning notice before the Administrator proceeded to shut down his place of business for so long a period as a year. It is clear, then, that the Congress was aiming at a requirement that the Administrator, through his agent, of course, before filing

an action of the type here considered, should give the retailer the benefit of an inspection of his store, point out the violation to him, if any occurred (and, as has been said, the very nature of the case made such violations inevitable even for the most meticulous retailer whose clerks or customers might displace posting signs, or otherwise disarrange his merchandise so that literal violation might occur) and thus give him an opportunity to police his operation, and to bring his store in compliance with the regulation. This record is devoid of any evidence that petitioner's store was thus inspected on either of the dates referred to in the warning notice. From all that appears in the record, the Administrator, without having petitioner's premises inspected, issued the warning notice. Nevertheless, the Administrator here insists that he has fulfilled the condition precedent of the statute. If he is allowed to succeed in this contention, he has been allowed to vitiate the intention of the legislators. This is so because, under the Administrator's view, to make enforcement by this type of action available to him, he could distribute and serve these warning notices indiscriminately on all retailers within a certain area or areas, based simply upon his surmise or suspicion that violations existed. It is not to be denied that his surmise probably would be correct. In other words, it would probably be safe to guess that any retailer dealing in thousands of items must at any given moment be in violation of at least one of the regulations of the Administrator. But this would frustrate the intention of Congress.

This omission of his duty to inspect cannot be excused by any presumption that a public officer will do, or has done, his duty. This was a statutory burden laid upon him by the Congress and he must show just as clearly per-

formance of his duty to inspect as he does his duty to serve the warning notice after his inspection, if that inspection shows violation. At the most this presumption could only establish fulfillment of his duty to inspect. It could not mean that, in addition, it is to be presumed that violations were found on the presumed inspection.

It was, therefore, incumbent upon the Administrator to prove at the trial of this cause that he did three things.

The first of these requirements is that he should have proved that he discharged his duty of inspection. He did not prove this,

The next requirement is that a warning notice be served before the action was commenced. A document entitled warning notice, and intended to be such, was admittedly served. This was the second requirement and was fulfilled.

Attention will now be directed to the third requirement. By this is meant the requirement that at the trial of this cause he should have proved, as he proved any other fact, that the violations asserted in the warning notice were factual and not merely his suspicions. To do this, he should have had testimony showing the violations complained of in that notice. No such testimony is here present. He was required to prove at least one of the violations asserted in the warning notice just as much as he was required to prove the violations alleged specifically in the complaint as having occurred after the warning notice was served. But this he did not do.

This last requirement is important for still another reason. The warning notice requirement of this statute clothed petitioner with considerable protection. Until it

was served, so far as this kind of action is concerned, he could operate in flagrant violation of every regulation of the Administrator. However, once the Administrator observed a violation, assembled the evidence to establish it, and served the statutory warning notice, petitioner's immunity was cut off. From that moment on he acted at his own peril, so far as enforcement by this type of action is concerned. On the other hand, he could be in compliance for a long period of time, then fall into non-compliance innocently, for the purposes of this illustration, proceed to rectify his errors, confident that this type of action could not be invoked against him until the Administrator inspected his premises and issued the warning notice.

Conclusion.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted and that this Honorable Court should review the decision of the United States Circuit Court of Appeals and finally reverse it.

September, 1946.

LOUIS H. BURKE,
Counsel for Petitioner.

DANIEL G. MARSHALL,
Of Counsel.